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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR WEBER COUNTY, STATE OF UTAH

BONNIE LOU CONGER, individually and
on behalf of the heirs of BRIAN CONGER,
deceased, and as presumptive personal
representative of the ESTATE OF BRIAN
CONGER,

Plaintiff,

v.

HOME DEPOT U.S.A. INC., TARACA
PACIFIC, INC., LINYI HENG SHENG
WOOD INDUSTRY CO., LTD and JOHN
DOES 1-10,

Defendants.

COMPLAINT

Civil No.

Judge

Tier III

COMES NOW, Plaintiff and complains of Defendants as follows:

1. This Complaint is filed as a Tier III matter pursuant to Rule 26 of the Utah Rules of Civil Procedure.

2. The acts complained of herein occurred in Weber County, State of Utah.

3. Plaintiff Bonnie Lou Conger is the natural mother of Brian Conger, deceased and the presumptive personal representative of the Estate of Brian Conger. Brian Conger left behind a minor daughter, as well as his mother Bonnie.

4. Defendant Home Depot U.S.A., Inc. (hereinafter “Home Depot”) is a foreign Corporation registered in and duly authorized to do business in the State of Utah.

5. Defendant Taraca Pacific, Inc. (hereinafter “Taraca”) is a foreign corporation with its headquarters located in San Francisco, California. Upon information and belief, Taraca imports and distributes wood products throughout the United States including to Defendant Home Depot locations located in the State of Utah.

6. Defendant Linyi Heng Sheng Wood Industry Co., Ltd, (hereinafter “Linyi Wood”) is a Chinese company which, upon information and belief exports wood products to the United States, in particular, the plywood pallets identified herein.

7. Defendant John Does 1-10 are other entities in the supply chain with Defendant’s Home Depot U.S.A., Inc. Taraca and Linyi Wood.

8. On or about December 20, 2017, Brian Conger, deceased, was working for Specialized Rail Service, Inc. (hereinafter “Specialized Rail”) moving pallets of Home Depot Pine Plywood sku#00000-175-171 (17.5 mm – 4’x8’ 38 pieces per box, 2 boxes per pallet) with a bale-clamp forklift in the warehouse. Mr. Conger stacked the pallet on end as he had been instructed.

9. Upon information and belief, Brian got out of the forklift and was near the pallet when, at least one of the metal banding which was wrapped around the pallet to secure the boxes of plywood failed and the pallet of plywood weighing approximately 2000 pounds tipped, and fell on Brian.

10. Brian was trapped under the pallet for approximately five to ten minutes before co-workers were able to get a forklift to remove the pallet of plywood from atop his body.

11. Brian was transported via ambulance to McKay Dee Hospital where he was alert and talking through the stay in the emergency room, CT Scan and on his way to the operating room. Brian had suffered chest and pelvic crushing. Unfortunately, Brian had also suffered a severed left iliac artery in the accident which was the ultimate cause of his death.

12. Upon information and belief, Defendant Home Depot was transporting its Pine Plywood products through Utah where Specialized Rail Service, Inc. would receive shipments and then send out the products for delivery.

13. Upon information and belief, defendants Taraca and/or Linyi Wood were responsible for packaging the pallets of pine plywood sku#00000-75-71 to be sold by defendant Home Depot after being shipped to Specialized Rail. This included securing each pallet with metal banding which should not snap, break or otherwise fail.

14. Upon information and belief, defendants negligently failed to properly install, inspect, tighten, test and/or otherwise ensure that the banding used to secure the pallet of pine

plywood that fell on Brian Conger would remain secure during shipping, including the shipping to Specialized Rail.

15. Upon information and belief, defendant Home Depot was negligent in failing to ensure that its pine plywood products which as shipped weigh approximately 2000 pounds, when shipped were reasonably safe and secure for those involved in the shipping chain knowing that there would be multiple persons/entities involved in the shipping of this product who would rely on the fact that the banding was secure and would not fail during movement. Upon information and belief, Home Depot's negligent acts included failing to inspect their suppliers' processes, failure to test the banding upon receipt to ensure that the shipments were properly banded, and/or not testing or demanding certification from any of their suppliers that the banding equipment used was in good working order and was providing safely installed banding materials.

16. Defendants, and each of them knew at all times relevant hereto of the danger posed by a 2000-pound pallet of pine plywood if it is not properly secured with banding materials. Defendants acted negligently toward Plaintiff by, among other things, failing to warn Plaintiff of the danger of improperly banded pallets, failing to take reasonable action to make the pine plywood pallet reasonably safe and otherwise acting without reasonable care.

17. Defendants' negligence was the sole and proximate cause of this accident and Brian's injuries and his death.

18. As a proximate result of Defendants' negligence, Brian Conger has sustained injuries including, but not limited to a severed iliac artery, crushed chest and pelvis, and ultimately death.

19. As a further proximate result of Defendants' negligence, Brian sustained medical bills in an amount yet to be ascertained.

20. As a further proximate result of Defendants' negligence, Plaintiff suffered burial expenses in an amount to be determined.

21. As a further proximate result of Defendants' negligence, Brian Conger sustained lost wages in an amount yet to be ascertained. The amount of said lost wages is presently unknown. Brian's heirs have lost the financial support of Brian Conger both past and into the future as well as the loss of inheritance, all in an amount to be proven at trial.

22. As a further proximate result of Defendants' negligence, Brian Conger sustained pain of both body and mind. Brian Conger has sustained a loss of enjoyment of life, mental anguish, and emotional distress, all in an amount to be proven at trial.

23. As a further and proximate result of Defendants' negligence, Plaintiff and the heirs of Brian Conger have each suffered and sustained mental anguish, emotional distress, loss of care, companionship and guidance in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for relief as follows:

1. For special damages suffered by Brian Conger including past medical bills, past and future lost wages and other out of pocket losses in an amount yet to be ascertained. Plaintiff will seek leave of court to amend in the amount of said special damages once they are known.

2. For the pain and suffering, loss of care, companionship and guidance in an amount to be proven at trial.

3. For general damages suffered by each heir in an amount to be proven at trial.

4. For costs of court, interest, and such other and further relief as the court deems just and proper.

5. This action is filed as a Tier III matter pursuant to Rule 26 of the Utah Rules of Civil Procedure.

DATED this 11th day of December, 2019.

ROBERT J. DEBRY & ASSOCIATES
Attorneys for Plaintiff

By: /s/ S. BROOK MILLARD
G. STEVEN SULLIVAN
S. BROOK MILLARD

Return of Electronic Notification

Recipients

G STEVEN SULLIVAN - Notification received on 2019-12-10 13:38:08.12.

S BROOK MILLARD - Notification received on 2019-12-10 13:38:07.477.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 190907189

Case Title: CONGER, BONNIE LOU vs. HOME DEPOT
USA INC, et al.

Judge: CAMILLE NEIDER

Commissioner:

Official File Stamp: 12-10-2019 13:37:55

Court: SECOND DISTRICT COURT - OGDEN
District
Ogden

Document(s) Submitted: Complaint

Filed by or in behalf of: G STEVEN SULLIVAN

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

S BROOK MILLARD for BONNIE LOU CONGER
G STEVEN SULLIVAN for BONNIE LOU
CONGER

The following people have not been served electronically by the Court. Therefore, if service is required, they must be served by traditional means:

JOHN DOES 1-10
LINYI HENG SHENG WOOD INDUSTRY
TARACA PACIFIC INC
HOME DEPOT USA INC

Robert J. Debry & Associates (SLC Office)
4252 South 700 East
Salt Lake City, UT 84107

Atty File #: 190907189
Job ID #: 478119

IN THE SECOND JUDICIAL DISTRICT COURT, COUNTY OF WEBER, STATE OF UTAH

Plaintiff/Petitioner: BONNIE LOU CONGER, ET AL

vs.

Defendant/Respondent: HOME DEPOT U.S.A. INC., ET AL

DECLARATION OF SERVICE

Case No: 190907189

Legal documents received by COURT OPS on the March 20, 2020 to be served on:

HOME DEPOT USA INC c/o CORPORATION SERVICE COMPANY, REGISTERED AGENT
15 W SOUTH TEMPLE STE 600 SALT LAKE CITY, UT 84101

I, **Tanner James**, being duly sworn, swear and affirm that on the **March 25, 2020** at **11:07 AM**, I did the following:

CORPORATE SERVICE: By personally handing the legal document(s) with a conformed copy of this **SUMMONS; COMPLAINT** to **LINDSAY LARSON , AUTHORIZED TO ACCEPT FOR R.A. COMPANY**, at **15 W SOUTH TEMPLE STE 600 SALT LAKE CITY, UT 84101** at approximately **11:07 AM** on **MARCH, 25TH 2020**.

Supplemental Data Appropriate to this Service:

15 W SOUTH TEMPLE STE 600 SALT LAKE CITY, UT 84101

Description of the person served:

Gender: Female, Race/Skin Color: White, Hair Color: Blond, Approx. Age: 30, Approx. Height: 5' 8", Approx. Weight: 120

I HEREBY CERTIFY that I am 18 years of age or older, a resident of the State of Utah, and have no interest in the above legal matter. I further certify that at the time of service of the said article(s), I endorsed my name and official title and added the date thereto. I declare under criminal penalty of the State of Utah that the foregoing is true and correct. (Utah State Code: 78B-18a. Unsworn Declaration in Lieu of Affidavit)

Service Fee: **\$38.00**



Tanner James PI# A129241
COURT OPS
5693 S Redwood Rd, Ste 13
Taylorsville, UT 84123
(801) 261-9000



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Attorneys for Plaintiff

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HOME DEPOT U.S.A. INC., TARACA
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WOOD INDUSTRY CO., LTD and JOHN
DOES 1-10,

Defendants.

SUMMONS

Civil No. 190907189
Judge Camille Neider

Tier III

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

HOME DEPOT U.S.A. INC.
Corporation Service Company, Registered Agent
15 West South Temple, #600
Salt Lake City, UT 84101

You are hereby summoned and required to file an answer in writing to the attached Complaint with the Clerk of the above-entitled Court, and to serve upon, or mail to Robert J. DeBry and Associates, 4252 South 700 East, Salt Lake City, Utah, 84107, Plaintiff's attorney, a copy of said answer, within 21 days after service of this Summons upon you. If you fail so to do, judgment by default will be taken against you for the relief demanded in said Complaint which has been filed with the Clerk of said Court (2525 Grant Avenue, Ogden, Utah 84401) and a copy of which is hereto annexed and herewith served upon you.

DATED this 20 day of March, 2020.

ROBERT J. DEBRY & ASSOCIATES
Attorneys for Plaintiff

By /s/ S. Brook Millard
G. STEVEN SULLIVAN
S. BROOK MILLARD

Serve Defendant at:

15 West South Temple, #600
Salt Lake City, UT 84101

#73

Return of Electronic Notification

Recipients

G STEVEN SULLIVAN - Notification received on 2020-03-26 14:05:53.417.

S BROOK MILLARD - Notification received on 2020-03-26 14:05:53.357.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

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Case Title: CONGER, BONNIE LOU vs. HOME DEPOT USA
INC, et al.

Judge: CAMILLE NEIDER

Commissioner:

Official File Stamp: 03-26-2020 14:05:39

Court: SECOND DISTRICT COURT - OGDEN
District
Ogden

Document(s) Submitted: Return of Service Declaration of Service / Home
Depot USA INC.

Filed by or in behalf of: G STEVEN SULLIVAN

This notice was automatically generated by the courts auto-notification system.

-

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